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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	)	Criminal No. 1:CR-01-195
	)	(Judge Caldwell)
v.	)	(Electronically filed)
	)	
<b>ANTHONY BRAXTON</b>	)	

**RESPONSE OF THE UNITED STATES  
TO THE MOTION FOR RELIEF PURSUANT  
TO 28 U.S.C. § 2255**

**AND NOW** this 19th day of October 2006, comes Thomas A. Marino, United States Attorney for the Middle District of Pennsylvania, by William A. Behe, Assistant United States Attorney, who files this Response of the United States to the Motion for Relieve Pursuant to 28 U.S.C. § 2255 and, in support thereof, alleges as follows:

1. On or about August 16, 2006, the above-captioned petitioner, Anthony Braxton, filed a motion for relief pursuant to 28 U.S.C. § 2255.
2. Accompanying that Motion was a document entitled "Affidavit in Support of Motion" .
3. In the formal motion, the petitioner made an allegation of ineffective assistance of counsel claiming that counsel did not file a direct appeal on his behalf although asked to do so and that counsel did not challenge the United States' decision not to file a motion pursuant to § 5K1.1 of the United States Sentencing Guideline although asked by the petitioner to do so.

4. These bald allegations were explained in more detail in the Affidavit in Support of Motion.

5. The United States is unable to respond to these motions inasmuch as they involve allegations of ineffective assistance of counsel based on specific requests by the Petitioner of his lawyer, Daniel Pell, Esquire, in conversations to which the United States was not privy.

6. If indeed the petitioner made these requests of prior counsel and counsel ignored or refused to take the action requested by the petitioner, then there may be a basis for relief. However, counsel may deny the allegations or counsel may have an explanation for not taking the action requested of him by the petitioner on the basis of additional conversations with the petitioner or a legally acceptable reason.

7. In any event, the motion cannot be disposed of on the pleadings and requires a hearing at which time the petitioner can present testimony and supporting documentation and the United States can call his attorney, Daniel Pell, Esquire, as a witness to address the petitioner's allegations.

WHEREFORE, it is respectfully requested that this Honorable Court schedule a hearing to take testimony and any other evidence concerning the allegations raised by the petitioner in his motion pursuant to 28 U.S.C. § 2255.

Respectfully submitted,

THOMAS A. MARINO  
UNITED STATES ATTORNEY

/s/ WILLIAM A. BEHE

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 19th day of October 2006, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania and/or by electronic means by sending a copy to the e-mail addresses stated below:

ADDRESSEE(S):  
Anthony Braxton  
Inmate No. 10848-067  
FCI  
P.O. Box 1000/Camp B-unit  
Fort Dix, NJ 08640

/s/ CYNTHIA A. ZIMMERMAN

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CYNTHIA A. ZIMMERMAN  
Legal Assistant